

Kent Krause

From: Anthony Orlandi <aorlandi@bsjfirm.com>
Sent: Wednesday, March 02, 2016 5:28 PM
To: 'Paul E. Wehmeier'
Cc: 'kkrause@bkblaw.com'; Ben Gastel
Subject: Cumberland, SSC, Covenant/Crossville Records

Paul:

I just spoke with Kent about the records that Cumberland will be producing in response to the PSC's subpoena, and the two servers (one in operation, one not) in Covenant's possession that conceivably could contain emails by a few former members of the SSC Executive Committee. After discussing it with Kent, I think it makes sense to copy him on our communications going forward to make sure that we are on the same page.

First, everyone seems to be on the same page that LogicForce would be an acceptable vendor if we decide to utilize them, and Kent did not have any immediate objection to Sword & Shield (with which neither he nor my firm has any prior experience, to my knowledge).

Second, now that I have a slightly better understanding of the situation relative to Covenant, I had a few follow-up questions for you: (1) When did Covenant switch from the old server to the new one? (2) Would the new server likely contain archived emails that correspond to those on the old server? (Essentially, I am just trying to figure out if it would likely be duplicative to cull information from both servers simultaneously); and (3) Would Covenant be willing to (a) image the email accounts on the new server itself at its own expense and provide those images to the vendor, and (b) permit the vendor to retrieve the old server physically and conduct an "in-lab" imaging of them, which would save costs?

Third, with respect to Cumberland's response to the subpoena, Kent raised the issue that SSC should also be able to take a pass at reviewing records before they are produced (or made available) to the PSC. We can work that into the protocols that we will be developing, which would involve the vendor posting/storing the information in a database (at some point running search terms to cull the dataset), permitting you all to get access to those materials first for purposes of attorney review (for HIPAA, privilege, etc), and then giving the PSC access once the attorney review is complete. I am not sure whether SSC would similarly need to enter into a Business Associates' Agreement with the vendor relative to Cumberland's production, but I will leave it to Kent to weigh in on that.

Fourth, the PSC and SSC were already prepared to discuss what search terms to run, and it may make sense to use uniform search terms across all of the servers and email accounts currently at issue. I will do my best to have proposed search terms ready this week. My assumption is that the search terms will matter more to SSC than to your clients, but I will run them by you anyway as a courtesy. Also, I will try to get you and LogicForce on the phone together tomorrow with me to discuss LogicForce's technical questions regarding the seven computers in Cumberland's possession.

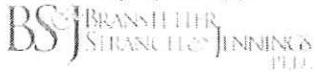
I also recognize that the parties have not come to an agreement as to who should pay for the searches of the two servers in Covenant's possession and the computers in Cumberland's possession. I think we can address/debate cost-shifting or cost-splitting once we have ironed out protocols, search terms, and projected costs. I also understand your position that Covenant/Crossville is essentially attempting to "accommodate" a request from SSC relative to the two servers in Covenant's possession, while Cumberland is formally attempting to respond to the PSC's subpoena.

Finally, my understanding is that you are working on a Business Associates' Agreement (as between Cumberland and the third-party vendor) and a proposed qualified protective order for HIPAA purposes. I imagine that you will also want to work out a similar arrangement with respect to Covenant, but I will leave that to you.

If I am misstating anything here, please let me know. Thank you for your continued cooperation and I look forward to speaking with you tomorrow.

Best,
Tony

Anthony (Tony) A. Orlandi



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